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**DESIGN-BUILD CONSTRUCTION AUTHORITY
FOR EXPEDITING CONSTRUCTION PROJECTS**

- This bill would authorize the use of the design-build contracting method by the Department of Corrections and Rehabilitation.
 - This method of contracting hires a single entity for both design and construction of a project, rather than separating these two phases of the project.
 - Design-build contracting is not a preferred method of contracting for all types of construction projects. However, when appropriate, it can lead to both cost savings and time savings on construction projects.
 - This bill will allow the Department to use design-build when it determines that a project would benefit from this alternative contracting method.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7020 is added to the Penal Code, to read:

7020. (a) For the purposes of this section, the following definitions shall apply:
- (1) "Design-build" means a construction procurement process in which both the design and construction of a project are procured from a single entity.
 - (2) "Design-build project" means a capital outlay project using the design-build construction procurement process.
 - (3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed.
 - (4) "Design-build solicitation package" means the performance criteria, any concept drawings deemed necessary by the Department of Corrections and Rehabilitation, the form of contract, and all other documents and information that serve as the basis on which bids or proposals will be solicited from the design-build entities.
 - (5) "Design-build phase" means the period following the award of a contract to a design-build entity in which the design-build entity completes the design and construction activities necessary to fully complete the project in compliance with the terms of the contract.
 - (6) "Performance criteria" means the information that fully describes the scope of the proposed project and includes, but is not limited to, the size, type, and design character of the buildings and site; the required form, fit, function, operational requirements, and quality of design, materials, equipment, and workmanship; and any other information deemed necessary to sufficiently describe the state's needs.
 - (7) "Concept drawings" means any drawings or architectural renderings that are prepared, in addition to performance criteria, in such detail as the Secretary of the Department of Corrections and Rehabilitation determines necessary to sufficiently describe the state's needs.

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(b) Notwithstanding any provision of the Public Contract Code or any other provision of law, the Secretary of the Department of Corrections and Rehabilitation may use of the design-build construction procurement process to contract and procure state prison facilities and other buildings, structures, and related facilities pursuant to this section.

(c) Prior to contracting with a design-build entity for the procurement of state prison facilities and other prison buildings and structures and related facilities, the secretary shall:

(1) Prepare a program setting forth the performance criteria for the design-build project. The performance criteria shall be prepared by a design professional duly licensed and registered in the State of California.

(2) (A) Establish a competitive prequalification and selection process for design-build entities, including any subcontractors listed at the time of bid, that clearly specifies the prequalification criteria, and states the manner in which the winning design-build entity will be selected.

(B) Prequalification shall be limited to consideration of all of the following criteria:

(i) Possession of all required licenses, registration, and credentials in good standing that are required to design and construct the project.

(ii) Submission of evidence that establishes that the design-build entity members have completed, or demonstrated the capability to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

(iii) Submission of a proposed project management plan that establishes that the design-build entity has the experience, competence, and capacity needed to effectively complete the project.

(iv) Submission of evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial

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statement that assures the department that the design-build entity has the capacity to complete the project.

(v) Provision of a declaration certifying that applying members of the design-build entity have not had a surety company finish work on any project within the last five years.

(vi) Provision of information and a declaration providing detail concerning all of the following:

(I) Any construction or design claim or litigation totaling more than five hundred thousand dollars (\$500,000) or 5 percent of the annual value of work performed, whichever is less, settled against any member of the design-build entity over the last five years.

(II) Serious violations of the Occupational Safety and Health Act, as provided in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, settled against any member of the design-build entity.

(III) Violations of federal or state law, including, but not limited to, those laws governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements, settled against any member of the design-build entity over the last five years. For the purposes of this subclause, only violations by a design-build member as an employer shall be deemed applicable, unless it is shown that the design-build entity member, in his or her capacity as an employer, had knowledge of his or her subcontractor's violations or failed to comply with the conditions set forth in subdivision (b) of Section 1775 of the Labor Code.

(IV) Information required by Section 10162 of the Public Contract Code.

(V) Violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations or complaints.

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(VI) Any conviction of any member of the design-build entity of submitting a false or fraudulent claim to a public agency over the last five years.

(vii) Provision of a declaration that the design-build entity will comply with all other provisions of law applicable to the project, including, but not limited to, the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(C) The secretary, when requested by the design-build entity, shall hold in confidence any information required by clauses (i) to (vi), inclusive.

(D) Any declaration required under subparagraph (B) shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge. A person who certifies as true any material matter that he or she knows to be false is guilty of a misdemeanor and shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment.

(3) (A) Determine, as he or she deems in the best interests of the state, which of the following methods listed in subparagraph (B) will be used as the process for the winning design-build entity. The secretary shall provide a notification to the State Public Works Board, regarding the method selected for determining the winning design-build entity, at least 30 days prior to publicizing the design-build solicitation package.

(B) The secretary shall make his or her determination by choosing one of the following methods:

(i) A design-build competition based upon performance, price, and other criteria set forth by the department in the design-build solicitation package. The department shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology in the design-build solicitation package. Award shall be made to the design-build entity whose proposal is judged as providing the best value in meeting the interest of the department and meeting the objectives of the project. A

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project with an approved budget of ten million dollars (\$10,000,000) or more may be awarded pursuant to this clause.

(ii) A design-build competition based upon performance and other criteria set forth by the department in the design-build solicitation package. Criteria used in this evaluation of proposals may include, but need not be limited to, items such as proposed design approach, life-cycle costs, project features, and functions. However, any criteria and methods used to evaluate proposals shall be limited to those contained in the design-build solicitation package. Award shall be made to the design-build entity whose proposal is judged as providing the best value, for the lowest price, meeting the interests of the department and meeting the objectives of the project. A project with an approved budget of ten million dollars (\$10,000,000) or more may be awarded pursuant to this clause.

(iii) A design-build competition based upon program requirements and a detailed scope of work, including any performance criteria and concept drawings set forth by the department in the design-build solicitation package. Award shall be made on the basis of the lowest responsible bid. A project with an approved budget of two hundred fifty thousand dollars (\$250,000) or more may be awarded pursuant to this clause.

(4) For the purposes of this subdivision, the following definitions shall apply:

(A) "Best interest of the state" means a design-build process that is projected by the secretary to reduce the project delivery schedule and total cost of a project while maintaining a high level of quality workmanship and materials, when compared to the traditional design-bid-build process.

(B) "Best value" means a value determined by objective criteria that may include, but is not limited to, price, features, functions, life cycle costs, experience, and other criteria deemed appropriate by the department.

(d) The Legislature recognizes that the design-build entity is charged with performing both design and construction. Because a design-build contract may be awarded prior to the completion of the design, it is often impracticable

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for the design-build entity to list all subcontractors at the time of the award. As a result, the subcontractor listing requirements contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code can create a conflict with the implementation of the design-build process by requiring all subcontractors to be listed at a time when a sufficient set of plans may not be available. It is the intent of the Legislature to establish a clear process for the selection and award of subcontracts entered into pursuant to this section in a manner that retains protection for subcontractors while enabling design-build projects to be administered in an efficient fashion. Therefore, all of the following requirements shall apply to subcontractors, licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, that are employed on design-build projects undertaken pursuant to this section:

(1) The department, in each design-build solicitation package, may identify types of subcontractors, by subcontractor license classification, that will be listed by the design-build entity at the time of the bid. In selecting the subcontractors that will be listed by the design-build entity, the department shall limit the identification to only those license classifications deemed essential for proper completion of the project. In no event, however, may the department specify more than five licensed subcontractor classifications. In addition, at its discretion, the design-build entity may list an additional two subcontractors, identified by subcontractor license classification, that will perform design or construction work, or both, on the project. In no event shall the design-build entity list at the time of bid a total amount of subcontractors that will perform design or construction work, or both, in a total of more than seven subcontractor license classifications on a project. All subcontractors that are listed at the time of bid shall be afforded all of the protection contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code. All subcontracts that were not listed by the

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design-build entity at the time of bid shall be awarded in accordance with paragraph (2).

(2) All subcontracts that were not to be performed by the design-build entity in accordance with paragraph (1) shall be competitively bid and awarded by the design-build entity, in accordance with the design-build process set forth by the department in the design-build solicitation package. The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted in accordance with Section 10140 of the Public Contract Code.

(B) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with Section 10141 of the Public Contract Code.

(C) As authorized by the department, establish reasonable prequalification criteria and standards, limited in scope to those detailed in paragraph (2) of subdivision (c).

(D) Provide that the subcontracted work shall be awarded to the lowest responsible bidder.

(e) This section shall not be construed and is not intended to extend or limit the authority specified in Section 19130.

(f) Any design-build entity that is selected to design and construct a project pursuant to this section shall possess or obtain sufficient bonding consistent with applicable provisions of the Public Contract Code. Nothing in this section shall prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(g) Any payment or performance bond written for the purposes of this section shall use a bond form developed by the department. In developing the bond form, the department shall consult with the surety industry to achieve a bond form that is consistent with surety industry standards, while protecting the interests of the state.

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(h) The provisions of Section 13332.19 of the Government Code relating to design-build projects under the jurisdiction of the Department of General Services shall also apply to design build project authorized under this section.

SEC. X. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

As of June 2006, the prison inmate population totaled nearly 172,000. More than 16,000 inmates are being housed in buildings that were not designed as housing units, and all capacity in these non-traditional spaces will be exhausted by June 2007. In order to provide prison capacity beyond 2007, and construct housing units and related program space to replace non-traditional housing, it is necessary that this act take effect immediately.